



Transgender Litigants in the Court System

Providing Equal Access and Impartial Justice

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Who Might Be Transgender?

- People who **dress in a way** that is associated with one sex, even though they were raised as another sex
- People who **identify** as a particular sex or gender, even though they were raised as a different sex or gender
- People who simply **do not identify with either** male or female at all
- People who identify with **parts of one sex or gender** and **parts of another** sex or gender

How Many Transgender People Are There?

- Its hard or impossible to estimate, because trans status is not included in most survey data
- Many trans people do not feel comfortable “outing” themselves because of fear of harassment or violence
- Other people simply identify as men or women, and wouldn't describe themselves as transgender even if they have undergone a gender transition

The National Center for Transgender Equality estimates it is between .25% and 1% of the U.S. population....



...Which is roughly the population of Alaska. (NCTE/H.J. Tobin).

Transgender People Are Protected Under The Law

- State & Local Laws & Regulations
- Executive Orders & Administrative Policies
- Agency Directives
- Ethics Codes for Court-Appointed Experts
- Policy Statements of Professional Organizations
- Developing Case Law
- Prison Rape Elimination Act (PREA)

New York City Law Extends Broad Protections

- New York City Commission on Human Rights, Title 8, § 102 of the NYC Administrative Code
 - Explicitly protects against discrimination on the bases of gender identity or expression
 - Applies to employers, landlords, public accommodations, government agencies
 - Prohibits harassment, mistreatment, violence, or other forms of discrimination based on ACTUAL or PERCEIVED transgender status, gender identity, gender expression

Ethical Obligations of the Court

- Judicial Officers, Court Personnel and Officers of the Court are responsible for assuring that transgender adults and youth are treated equitably and fairly by everyone they meet in the courthouse and by everyone from whom they receive services.
- Judicial Officers, Court Personnel and Officers of the Court are responsible for developing cultural competence in working with transgender adults and youth to carry out their ethical obligation.

Components of Cultural Competency

Cultural Competency in transgender issues means:

- Breaking down terminology about gender, sex, and sexual orientation
- Identifying and challenging the messages we have received from our cultures, families, religions, and peers that may influence our beliefs or actions
- Deepening our understanding about transphobia in society
- Learning ways to support transgender people in court proceedings and in our personal lives

Transgender Terms of Art

- These are terms used by advocates and transgender people in legal, social and policy advocacy
- Can be used as a **BASELINE** for communicate about gender issues in the courtroom.
- Other terms issues may be raised or preferred in the individual context

The Term “Transgender”

- Usually “Transgender;” sometimes “Transgender-ED”
- Transgender is an umbrella term.
- The term applies to a wide variety of people who *transgress gender norms* in some way.
- Typically, the term is applied to people who dress or act in a way that is different or opposite from what is considered normal for their birth sex.

Breaking It Down...

GENDER vs. SEX

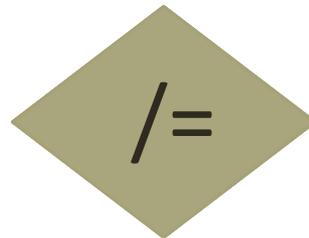
The World Health Organization defines gender as “the result of *socially constructed ideas* about the behavior, actions, and roles a particular sex performs”

See: <http://www.who.int/gender/whatisgender/en/index.html>

TRANSGENDER

Generally refers to a someone whose

**GENDER
IDENTITY
OR
EXPRESSION**



**ASSIGNED
BIRTH SEX**

Breaking It Down.... ASSIGNED BIRTH SEX

Advocates often use the term “Sex” to refer to **ANATOMICAL FEATURES** such as chromosomes, genitals, secondary sex characteristics like facial hair



When we say “Assignment” in this context, we are typically referring to the **NON CONSENSUAL** act of **ASSIGNING A GENDER** to a person that happens at birth

Why ASSIGNED SEX and not “BIOLOGICAL SEX” ... or Other Terms?

- Emphasizes the fact that a decision is being made by a third party from the beginning
- The reality is that 1 in 100 babies is born with sex characteristics that don't neatly fit into traditional concepts of male and female (Intersex Society of North America Study)
- Is more accurate, because many sex characteristics can and do change, in both transgender and non-transgender people

Breaking It Down....

GENDER EXPRESSION

The way a person expresses or represents their gender to the world

INCLUDES THINGS LIKE:

- Mannerisms/Posture
- Way of Speaking
- Way of Dressing
- Actions like holding doors, or not holding doors

INFLUENCED BY:

- Race & Class
- Culture
- Family Role
- Religion
- Peers
- Media



GENDER NON CONFORMITY

Any qualities, aspects, characteristics, or mannerisms a person may have which:

- Do not match assumptions about the sex they were assigned at birth, OR
- Do not match assumptions about the way that a particular gender should normally act or behave

Breaking It Down.... **GENDER IDENTITY**



A person's internal, personal sense of their gender.

Breaking It Down.... GENDER IDENTITY

- Gender Identity is INNATE – we all have one, and most people know theirs from a very young age
- Most people's gender identity remains the same no matter what they look like, act like, or what medical procedures they have had
- Sometimes peoples' gender identity can change over time, or as they grow and get to know themselves better
- Many people have gender identities that do not match their assigned birth sex.

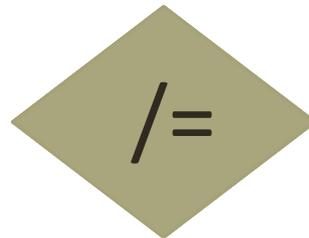
“CIS” - GENDER

- A term to refer to people whose gender identity matches or comports with the sex they were assigned at birth.
- Antonym of “transgender”
- Latin root, “cis” being opposite of “trans”

TRANSGENDER

Generally refers to a someone whose

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**ASSIGNED
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SOME TERMS TO DESCRIBE GENDER

- Woman/Female
 - Trans woman
 - MTF (male-to-female)
 - Woman of Trans Experience
 - Gender Non-Conforming Woman
 - Man/Male
 - Trans Man
 - FTM (female-to-male)
 - Man of Trans Experience
 - Gender Non-Conforming Man
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- Butch/Femme
 - AG or Aggressive
 - Genderqueer
 - Gender Non-Conforming
 - Gender Fluid
 - Gender Questioning

SOME TERMS TO AVOID

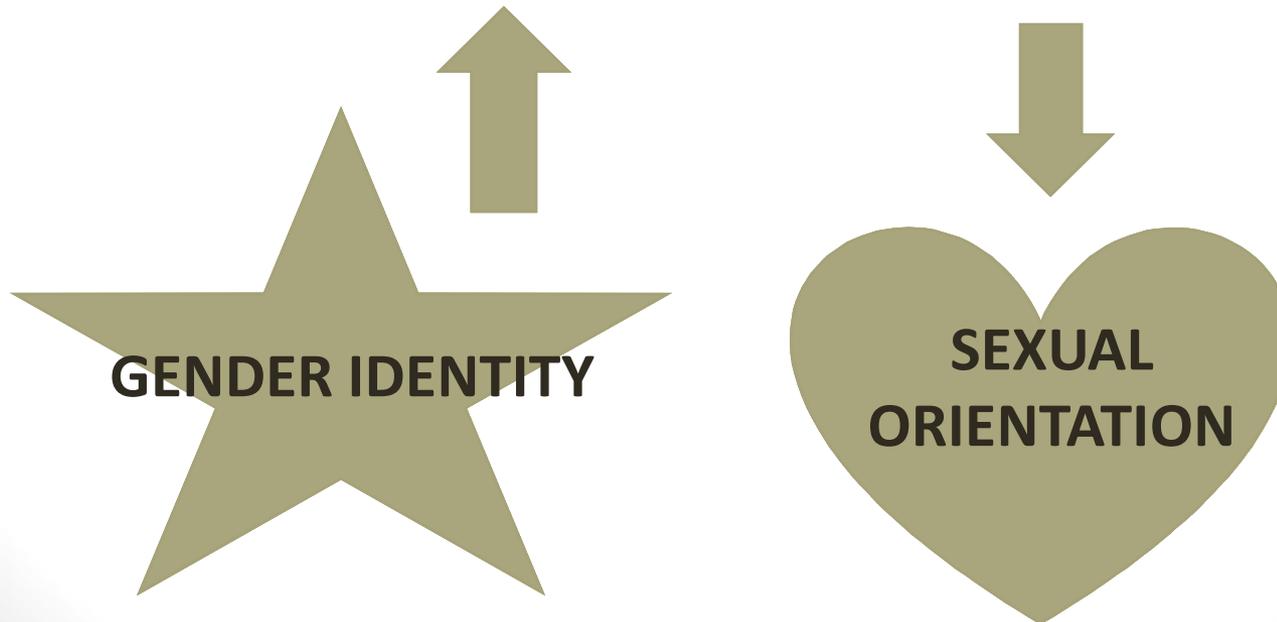
These terms have complicated, loaded, outdated or even discriminatory meanings and it is best to avoid them...unless you know that someone uses these terms for themselves.

- He-She
- Shemale
- Transvestite
- Tranny
- Pre-Op, Post-Op, Non-Op Transexual
 - Not negative but refers to ideas of legitimacy based on genital surgery that not all transgender people agree with
- Cross-Dresser
 - This one is not a negative term but refers to a specific community/identity

GENDER and SEXUAL ORIENTATION ARE DIFFERENT THINGS

- GENDER IDENTITY refers to the way a person identifies.
- SEXUAL ORIENTATION refers to who a person is attracted to.

I am a man. I am attracted to women.



Practice Tips

1) Challenge Assumptions

- A vital part of cultural competency is the willingness to challenge what you know and be open to experiences of people who are differently situated
- Challenging assumptions about gender means thinking critically about the impact of gender roles and expectations on both cis and transgender people
- We also have to look at our structures, from intake forms to bathrooms, from hiring practices to security checkpoints, to make sure transgender experiences are included and accounted for

2) Affirm Preferred Names

- Many transgender people prefer names that are more consistent with their gender expression or identity than the name they were given at birth
- If the name is legally changed, make sure amend court records.
- Transgender litigant may not have had a legal name change. Find ways to use preferred name whenever possible. Use AKA's in order to get name on the record, if so desired by clients (and consider whether existing AKA's are related to gender expression)

3) Affirm Gender

- Always use the preferred pronouns of a litigant. If you don't know, a bench conference or sidebar could be used to briefly check in with the litigant.
- Avoid using terms like "Mr." or "Ms." until you are certain about the gender identities of the litigants. An alternative would be to use last names only, or address the party using their role (Defendant, Plaintiff), etc.
- Don't assume litigants identify as a particular gender just because of their legal or preferred name, or their appearance.

TIP: Use the party's preferred name if possible, especially when calling a case. If not, use the last name only.

EX: "Rodriguez"

"Parties on Smith"

"Plaintiff Smith, Defendant Rodriguez"

4) Avoid Questions That Are Not Relevant To The Case

- Ask yourself if the question is necessary for the purpose of the proceeding or conversation
- Avoid questions that are personal or specific to a person's transgender experiences unless that person offers the information or indicates a willingness to talk about it
- If a person gets uncomfortable talking about it, don't push them to say more

5) Consider The Potential Impact of Transphobia On The Parties

- Unemployment – Did the litigant suffer discrimination or inability to find employment due to being transgender?
- Criminal history - Arrests for using the wrong bathroom, not having ID, petty theft of clothes or cosmetics, prostitution – could they be affected by the person's trans identity
- Family Ties – Frequently family relations become far more complicated when the child or a parent is transgender.
- History of Violence and Harassment - How might a climate of discrimination affect the case at hand?

6) Consider the Unique Impact of The Decision On Transgender People

- Will denial of bail result in jail conditions that disproportionately harm a transgender defendant? Will that unfairly coerce the defendant to take a plea?
- What will be the impact of standard prison or jail practices such as forced hair cuts?

7) Consider The Impact of the Conduct or Decision on Transphobia

- Every action to reduce transphobia matters!
- Every time a judge or attorney uses pronouns and names that affirm a litigants gender, it creates trust and investment in the legal system.
- Placement in alternative programs helps build up the capacity of those programs to support more transgender people